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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	CC Docket No. 98-77
	)	
Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers	)	CC Docket No. 98-166

To: The Commission

OPPOSITION TO PETITIONS FOR RECONSIDERATION

The South Dakota Telecommunications Association (SDTA) and Townes Telecommunications, Inc. (Townes), by its attorneys, hereby oppose the Petitions for Reconsideration filed by the Competitive Universal Service Coalition (CUSC) and the Rural Consumer Choice Coalition (RCCC), in which they ask the Commission to reconsider certain aspects of its Order[1] in the above-captioned proceedings. SDTA and Townes oppose all aspects of these Petitions, including the CUSC's request concerning a cap on the interstate common line support (ICLS) and disaggregating subscriber line charges (SLCs) and ICLS and the RCCC's request concerning traffic sensitive access costs.

[1] Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304, released November 8, 2001 (Order).

Townes is the parent company of a number of local exchange carriers subject to rate-of-return regulation and SDTA is an association of local exchange carriers subject to rate-of return regulation. Therefore, both would be impacted by the Commission's Order and any changes thereto.

CUSC'S PETITION

In its Petition for Reconsideration, CUSC asks the Commission to adopt a cap on the ICLS fund. According to CUSC, in the absence of a cap, the ICLS fund could experience unlimited growth "for the sole purpose of sheltering rural ILECs from the loss of revenues due to competitive entry...".[2] CUSC alleges that "[t]his violates competitive neutrality by guaranteeing incumbents a revenue 'war chest' that will never be available to their competitors."[3] CUSC also alleges that it "harms consumers by eliminating incentives for carriers to provide service efficiently" and "it is at odds with the underlying purpose of the Act, which is to ensure that consumers in rural and high-cost areas realize the benefits of competition."[4] CUSC argues that ICLS per-line funding in any given rural ILEC study area should not increase after the first funding year; total funding for any rural ILEC should be limited to ensure it does not increase the ILEC's rate of return or total amount of interstate revenues; and the ICLS should be limited by a national flat dollar amount.

The Commission should deny the CUSC's Petition requesting a cap on ICLS for incumbent LECs (ILECs). In the Order, the Commission found that rate-of-return LECs should continue to be able to set rates to recover their interstate access costs based on their historic booked costs. In addition, the Commission found that rural LECs should be allowed to set rates

[2] CUSC Petition at 7.
[3] Id.

based on an 11.25 percent rate-of-return. The Commission established the ICLS to recover that portion of the ILECs' allowed revenues, as determined by historic booked costs and an 11.25 percent return, that exceeds the revenues recoverable through subscriber line charges. According to the Commission, ICLS "will recover any shortfall between the allowed common line revenues of rate-of-return carriers and their SLC revenues..." and, as a result, it "will ensure that changes in the rate structure do not affect the overall recovery of interstate access costs by rate-of-return carriers serving high cost areas."[5]

A cap on the ICLS, as proposed by the CUSC, would prevent rate-of-return ILECs from recovering their costs, as allowed by law and Commission rule. This, in turn, would undercut the Commission's rationale that the changes in rate structure adopted in the Order do not affect the recovery of interstate access costs by rate-of-return carriers. A cap also would be a disincentive for LEC investment. Accordingly, as long as rural ILECs are subject to rate-of-return regulation, there should be no cap on the ICLS.

Moreover, CUSC's arguments in support of a cap are without merit. CUSC argues that, in the absence of a cap, the ICLS fund would shelter rural ILECs from the loss of revenues due to competitive entry, which would violate competitive neutrality by guaranteeing ILECs a revenue 'war chest' that will not be available to their competitors. The ICLS, however, is a substitute mechanism to allow rural ILECs to recover their allowable costs of providing service -- it does not amount to a "war chest" for ILECs.

The Commission's portability requirement, however, by guaranteeing competitive carriers support based on the ILECs' costs, regardless of the competitors' cost, services, or service quality, could lead to the creation of "war chests" for the competitors. Accordingly,

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[4] Id.
[5] Order at 10.

SDTA and Townes support the request by the National Telephone Cooperative Association in its Petition for Reconsideration, that the Commission review its definition of competitive neutrality and suspend application of the portability rules to ICLS in the interim. [6]

CUSC also alleges that an uncapped ICLS harms consumers by eliminating incentives for carriers to provide service efficiently and that it is at odds with the underlying purpose of the Act, which is to ensure that consumers in rural and high-cost areas realize the benefits of competition. It is not clear from CUSC's Petition how the ICLS or an uncapped ICLS eliminates incentives for carriers to provide service efficiently within the context of rate-of-return regulation.

CUSC also fails to explain how an uncapped ICLS prevents consumers in rural areas from realizing the benefits of competition, and it is hard to imagine how that is so. On the contrary, by guaranteeing support to competitors based on the ILECs' costs, regardless of the competitors' costs, services, or service quality, it seems more likely that competitors will be encouraged to enter markets even where it is not otherwise economically justified or efficient to do so. Again, the Commission should review its definition of competitive neutrality and suspend application of the portability rules to ICLS in the interim.

CUSC also asks the Commission to reconsider its order concerning SLC deaveraging and ICLS disaggregation. Specifically, to address concerns about the alleged potential anti-competitive nature of disaggregation, CUSC argues that whenever a rural ILEC disaggregates its study area for funding purposes, the study area should automatically disaggregate for ETC designation purposes as well. CUSC also argues that competitive ETCs should have the same right as ILECs to initiate study area disaggregation.

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[6] See, NTCA Petition at 6.

CUSC's Petition fails to explain how SLC deaveraging and ICLS disaggregation by the ILEC is anticompetitive, since they would reflect the relative cost of providing service in different zones within a study area. Therefore, it is unclear why the principle of deaveraging and disaggregation adopted in the Commission's Order is anticompetitive.

In fact, it appears that CUSC's real concern is that a rural ILEC could "manipulate" the boundaries for sub-study areas to skew support amounts.[7] This concern has already been addressed, however, with the disaggregation requirements. Thus, one disaggregation path requires plan approval by the appropriate regulatory authority and the other path, which allows self certification, includes specific disaggregation requirements. Moreover, a self-certified plan is subject to complaint by interested parties before the appropriate regulatory authority on the grounds that it does not comply with the self-certification requirements.[8] Therefore, if a competitor believes that an ILEC's specific disaggregation proposal does not meet the disaggregation requirements, then the competitor can raise its concerns in the complaint process.

In any event, the Commission must deny CUSC's Petition concerning study area disaggregation because it conflicts with Section 214(e)(5) of the Act. Section 214(e)(5) states that in the case of an area served by a rural telephone company, the service area for universal service purposes is the rural telephone company's study area, "unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company."

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[7] CUSC Petition at 4.

[8] See, In the Matter of Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 96-45; CC Docket No. 00-256, 16 FCC Rcd 11244 at para. 152 (FCC 01-157)(rel. May 23, 2001).

Because the Commission must, at a minimum, engage in the federal-state process in section 214(e)(5) before it can change the service area for an area served by a rural telephone company, CUSC's Petition cannot be granted in this reconsideration proceeding.[9]

RCCC'S PETITION

RCCC asks the Commission to reconsider its refusal to provide explicit support for high traffic-sensitive access costs. According to RCCC, explicit support is necessary to preserve the benefits of toll rate averaging and integration. Essentially, RCCC argues that the traffic-sensitive costs of local switching and transport for rural carriers that exceed those of non-rural carriers is an implicit subsidy that should be eliminated and replaced with explicit support. Thus, RCCC asks the Commission to lower NECA traffic-sensitive rates to an average of $.0095 per minute, and implement explicit support for the traffic-sensitive costs not recovered through this rate.

In support of its Petition, RCCC argues that the $.0095 target price should be adopted because it is the target price adopted pursuant to the CALLS Order[10] for the most rural price cap

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[9] In Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, CC Docket No. 96-45, FCC 01-283, at para. 8 (rel. October 5, 2001), the Commission found that it did not need to consult with the South Dakota Commission before designating Western Wireless as an ETC for a service area that differed from the rural telephone company's service area because, it concluded, that the federal-state process in section 214(e)(5) "contemplates situations in which only one entity, either the state commission or this Commission, has the authority to designate the rural telephone company's entire study area as the ETC's service area." Accordingly, even under the Commission's interpretation of Section 214(e)(5), the federal-state process would be required before CUSC's request could be granted.

[10] Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, Low-Volume Long-Distance Users, CC Docket No. 99-249, Report and Order, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962 (CALLS Order), aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel et al. v. FCC, No. 00-60434 (5th Cir. September 10, 2001).

LECs with the lowest teledensity. RCCC also apparently argues that it is necessary to adopt the same target price for rate-of-return carriers to maintain nationwide average long distance rates. These claims are without merit.

In the CALLS Order, the Commission adopted different target rates for different size carriers namely, $.0055 for the BOC LECs and GTE; $.0095 for primarily rural price cap carriers with subscriber densities of less than 19 per square mile; and $.0065 for all other price cap carriers. Therefore, there is no reason, and no Commission precedent, to support a specific rate for non-price cap carriers simply because it is the rate for rural price cap carriers. On the contrary, the fact that the Commission established different target rates for different price cap carriers undercuts RCCC's argument that the rates must be the same to ensure rate averaging. Thus, if price cap carriers can have different target rates without threatening rate averaging, then rate-of-return carriers should be able to set rates based on cost without ill effect. Given the small relative amount of traffic in rural areas as compared to non-rural areas, it is even less likely that a different rate for rate-of-return carriers will cause rate deaveraging.

Moreover, the target rates established in the CALLs Order represent an estimate of rates that might have been set through competition. There is no evidence that a target rate of $.0095 also represents an estimate of the rate that might be set through competition for rural rate-of-return carriers.

In sum, the Commission adopted a range of rates for price cap carriers in the CALLS Order and RCCC offers no explanation, and there is none, as to why the Commission must now adopt the same rate for rate-of-return carriers. Accordingly, RCCC's Petition should be denied.

CONCLUSION

Based on the foregoing, SDTA and Townes respectfully request that the Commission deny the Petitions for Reconsideration filed by CUSC and RCCC as discussed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing "Opposition To Petitions for Reconsideration" were served by first class U.S. mail or hand delivery on this 14th day of February, 2002 to the persons listed below:

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